IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2484 OF 2004

Shri Hariballabh L. Agrawal ...Petitioner.
V/s
1. M/s. Shubhlaxmi Securities
(P) Ltd and anr. ...Respondents.

Ms. Archana Khan for the petitioner.
Mr. D.P. Adsule for the respondent - State

CORAM: V.M.KANADE,J.
DATE: 17th March, 2005

P.C.:

1. Heard the learned Counsel for the petitioner.

2. Petitioner is challenging the issuance of process by the Trial Court on complaint filed by the Respondent No.1 under section 138 of the Negotiable Instruments Act. It is submitted by the learned Counsel for the petitioner that the transaction in question was a money lending transaction and that therefore the petitioner was not liable to pay the said amount and the complaint under section 138 was not maintainable in such a case. It is further submitted that the Trial Court also did not permit the petitioner to bring on record the subsequent facts. It is further submitted that Civil Suit was filed by respondent No.1. and in the said suit part of the amount has been deposited by the petitioner.

3. I am unable to accept the submission made by the learned Counsel for the petitioner. The question as to whether the transaction was loan transaction and whether there was existing liability towards which the cheque was issued or not is purely a question of fact and this question can be resolved only after the evidence is adduced in the Trial Court. So far as the question of settlement is concerned, in the trial court also similar application was made in 2004. However, the said settlement talks failed. Under the circumstances, the Criminal Writ Petition is dismissed.

4. Petitioner, however, shall be permitted to cross-examine the complainant if the application is made to that effect. Trial, however, is expedited. Trial Court to dispose of the case within three months.

5. All concerned to act on the copy of this order duly authenticated by the Registry.

V.M. KANADE, J.